IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1337 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JILUBHAI @ GOTABHAI RAIJIBHAI @ MANUBHAI SINDHA - Appellant

Versus

STATE OF GUJARAT - Respondent

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Appearance :
MR RAJESH M AGRAWAL for Appellant.
MR KT DAVE, APP for Respondent.

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
& HON'BLE MR.JUSTICE H.B.ANTANI

Date : 12/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated April 17, 1998 rendered by the learned Additional Sessions Judge, Nadiad, in Sessions Case No.293 of 1997 by which the appellant is convicted

under Sections 306 and 498A of the Indian Penal Code, and sentenced to suffer R.I. for eight years and fine of Rs.2,000=00, in default R.I. for six months for commission of offence punishable under Section 306 IPC as well as R.I. for two years and fine of Rs.500=00, in default R.I. for one month, for commission of offence punishable under Section 498A IPC. It may be stated that the learned Judge of the trial Court has directed that substantive sentences shall run concurrently.

2. The facts emerging from the record of the case are as under:

Complainant Bhailalbhai Parsottambhai Parmar is residing in Parmar Faliya of Village Kareli, Taluka : Jambusar, District : Bharuch. His daughter Jashodaben was married to the appellant before twelve years of the day of incident, which is October 9, 1997. During the course of subsistence of the marriage, the deceased gave birth to three sons. The appellant was suspecting fidelity of deceased Jashodaben and used to beat her. The ill-treatment, which was being meted out to her, was being narrated by her to her parents when she used to visit her parental house on occasions. However, on persuasion of Bhailalbhai, the deceased used to return and stay with the appellant at her matrimonial home. Before one year and three months of incident, Bhailalbhai went to matrimonial home of deceased Jashodaben. There he found that the deceased was lying on a cot. On inquiry, the deceased informed Bhailalbhai that she was ill, but she was not taken to a doctor for treatment. Therefore, Bhailalbhai took the deceased to his house where the deceased stayed for about one year. During this time, the appellant never came to the house of the deceased to bring her to her matrimonial home. However, sister-in-law of the deceased came to the house of Bhailalbhai to bring the deceased to her matrimonial home and, therefore, the deceased was sent to her matrimonial home with her sister-in-law. Again, on the occasion of *Rakshabandhan* day, the deceased came to her parental house and informed her parents that the appellant was suspecting her character and was subjecting her to physical and mental cruelty.

Again, the deceased was persuaded to return to her matrimonial home. On October 8, 1997 at about 6.00 p.m., a boy named Gala passed by the deceased. Though the deceased had no conversation with Gala, the appellant asked the deceased as to why she had talk with Gala. So saying, the appellant mercilessly beat the deceased. At that time, her father-in-law was not present in the house whereas her mother-in-law was present, but the appellant did not listen to his mother also when he was beating the deceased. As the deceased could not bear threshing received at the hands of the appellant, she poured kerosene over her at 9.00 a.m. on October 9, 1997 and set herself on fire. Because of burn injuries received by her, she started shouting and, therefore, neighbours rushed to her rescue and removed her to hospital. MK.Padhiyar, who was then Police Sub Inspector of Khambhat Rural Police Station, received information from Karamsad Hospital that the deceased was admitted in Karamsad Hospital with burn injuries. The information received was entered into Police Station Diary by the PSO of the Police Station. He also made arrangements for informing parents and others of the deceased about the incident. Mr.Padhiyar met the doctor on duty and after ascertaining that she was in a fit state of mind to make statement, recorded her statement. He addressed a *yadi* to Executive Magistrate to record the dying declaration of the deceased. Mr.Ignash Kabarial Mackwan, who was then Executive Magistrate, recorded declaration of the deceased. During the course of treatment, the deceased succumbed to her injuries. Meanwhile, Bhailalbhai, who is father of the deceased, came to the hospital and found that his daughter was dead. He, therefore, lodged his complaint with police which was duly investigated. The Investigating Officer recorded statements of those persons who were found to be conversant with the facts of the case. On completion of the investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate First Class, Kheda, for commission of offences punishable under Sections 306 and 498A IPC. As the offence punishable under Section 306 IPC is exclusive triable by a Court of Sessions, the case was committed to Sessions Court, Nadiad, for trial where it was numbered as Sessions Case No.293 of 1997.

3. The learned Additional Sessions Judge, Nadiad, to whom the case was made over for trail, framed charge against the appellant at Exh.2. It was read over and explained to the appellant. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (1) Bhailalbhai Parsottambhai as P.W.-1 at Exh.7; (2) Surajben Bhailalbhai as P.W.-2 at Exh.8; (3) Raijibhai Jivabhai as P.W.-3 at Exh.9; (4) Executive Magistrate Ignash Gabriele Mackwan as P.W.-4 at Exh.10; (5) Dr.Mayur Motilal Trivedi as P.W.-5 at Exh.13; (6) Chandubhai Jivabhai as P.W.-6 at Exh.17; and, (7) PSI Mahendrasinh Kanuji Padhiyar as P.W.-7 at Exh.19, to prove its case against the appellant. The prosecution also produced documentary evidence such as panchnama of place of incident at Exh.10; dying declaration of the deceased which was recorded by Executive Magistrate Mr.Mackwan at Exh.12; postmortem notes of the deceased prepared by Dr.Trivedi at Exh.15; inquest report of the deceased at Exh.18; statement of the deceased recorded by PSI Mr.Padhiyar at Exh.21; complaint of Bhailalbhai at Exh.22, etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant claimed that he was innocent. However, no defence evidence was adduced by him.

5. On appreciation of evidence adduced by the prosecution, the learned Judge of the trial Court held that it was proved by the prosecution that the appellant was suspecting fidelity of the deceased and, therefore, subjecting her to physical and mental cruelty. According to the learned Judge, it was further proved by the prosecution that the appellant had subjected the deceased to severe beating during the night of October 8, 1997 because according to the appellant, the deceased had a talk with one Galabhai of Village

Haripura and had illicit relation with him and as the deceased was not able to bear the physical and mental cruelty meted out to her, she poured kerosene over herself and set her on fire. The learned Judge found that commission of offences punishable under Sections 306 and 498A IPC was firmly established by the prosecution. In view of abovereferredto conclusions, the learned Judge has convicted the appellant under Sections 306 and 498A IPC by judgment dated April 17, 1998 giving rise to instant appeal.

6. Mr.R.M.Agrawal, learned counsel of the appellant, submitted that the deceased was not in a fit state of mind when her dying declaration was recorded by Executive Magistrate Mr.Mackwan and, therefore, it should not have been relied upon by the trial Court for the purpose of fastening criminal liability on the appellant. According to the learned counsel of the appellant, neither Bhailalbhai Parsottambhai, who was complainant and father of the deceased, nor Surajben Bhailalbhai, who was mother of the deceased, supported the case of the prosecution and, therefore, the learned Judge was not justified in convicting the appellant under Sections 306 and 498A IPC. The learned counsel of the appellant asserted that neither the statement of the deceased, which was recorded by PSI Mr.Padhiyar nor the dying declaration recorded by Executive Magistrate Mr.Mackwan could have been relied upon by the learned Judge of the trial Court for the purpose of accepting the case of the prosecution more particularly when the parents of the deceased did not support the prosecution case and, therefore, the impugned judgment should be set aside. The learned counsel submitted that the evidence on record has not been appreciated by the learned Judge of the trail Court in its true perspective and, therefore, the appeal may be allowed.

7. Mr.K.T.Dave, learned Additional Public Prosecutor appearing for the State, contended that the declaration of the deceased recorded by Mr.Mackwan as well as the statement recorded by Mr.Padhiyar fully establish that the appellant was suspecting the fidelity of the deceased and was subjecting the deceased to physical

as well as mental cruelty and, therefore, conviction of the appellant under Section 498A IPC should not be regarded as erroneous. It was argued that the statement made by the deceased makes it very clear that the deceased was beaten so severely by the appellant, that it was not possible for her to bear any further torture at the hands of the appellant and as the appellant had driven the deceased to commit suicide, the conviction of the appellant under Section 306 IPC should be upheld by this Court. The learned counsel of the State Government stressed that cogent and convincing reasons have been given by the learned Judge of the trial Court, who had advantage of observing demeanour of the witnesses, and as the learned counsel of the appellant has failed to dislodge them, the appeal which lacks merits should be dismissed by this Court.

8. This Court has heard Mr.R.M.Agrawal, learned counsel of the appellant, and Mr.K.T.Dave, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

9. The fact that the deceased committed suicide on October 9, 1997 after pouring kerosene over her and setting her on fire, is not in dispute. The said fact stands firmly established by the testimony of Dr.Trivedi, recorded at Exh.13. Dr.Trivedi had performed autopsy on the dead body of the deceased. The testimony of the doctor read with postmortem notes of the deceased prepared by him and produced by the prosecution at Exh.15, makes it more than clear that the death of the deceased took place because of shock resulting from extensive burns. The question which is posed for consideration of this Court is whether the deceased was subjected to physical and mental cruelty by the appellant and whether the appellant had meted out cruelty to the deceased knowing fully well that the deceased would be driven to commit suicide as she would not be able to bear cruelty meted out to her. It is true that the parents of the deceased have not supported

the prosecution. However, the reason is not far to seek. Bhailalbhai, in his cross-examination by the learned Additional Public Prosecutor, has, in terms, admitted that outside the Court a compromise was arrived at between the parties. It is shocking that the father entered into compromise with regard to unnatural death of his daughter more particularly when he was knowing that his daughter was subjected to unbearable physical and mental cruelty and he himself was instrumental in persuading his daughter to return to her matrimonial house and he himself had filed a complaint claiming that the deceased was driven to commit suicide because of ill-treatment meted out to her by the appellant. However, the case of the prosecution stands amply proved by the statement of deceased which was recorded by Executive Magistrate Mr.Mackwan. The testimony of Mr.Mackwan is recorded at Exh.10. Mr.Mackwan has clearly stated that on October 9, 1997, he was discharging duties as Executive Magistrate in the Office of the Mamlatdar, Anand, and he had received an intimation from Vidyanagar Police Station to record dying declaration of the deceased. Mr.Mackwan has stated that on receipt of the *yadi,* he had gone to Krishna Hospital, Karamsad, and ascertained from the doctor that the injured was conscious and was in a fit state of mind to make statement. The witness has, in no uncertain terms, stated that he had introduced himself to the deceased and, thereafter, recorded statement of the deceased as narrated by her. The statement of the deceased as recorded by him is produced on record of the case at Exh.12. Though this witness has been cross-examined at length, nothing could be brought on record to impeach his credibility. It is well to remember that as a part of his duty, this witness had gone to the hospital and recorded the statement of the deceased. Even remotely, it could not be suggested to this witness that he was on inimical terms with the appellant and, therefore, was out to implicate him falsely. The testimony of Executive Magistrate Mr.Mackwan read with the statement of the deceased produced by him at Exh.12, makes it abundantly clear that the appellant was suspecting the fidelity of the deceased and had beaten her for the whole night on the ground that she had a talk with a boy of the village though that was denied by her and in order to get rid from the cruelty meted out to her by the appellant, she had

poured kerosene over herself and set her on fire. This very case was stated by the deceased before PSI Mr.Padhiyar when her statement was recorded by him. The statement of the deceased as recorded by PSI is produced by the prosecution at Exh.21. That statement also makes it very clear that the deceased was subjected to unbearable cruelty by the appellant as a result of which she had committed suicide.

10. Section 498A IPC, *inter alia,* provides that *cruelty means any willful conduct, which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman*. The statements of deceased would make it clear that for the whole night, the appellant had mercilessly beaten her. Therefore, willful conduct on the part of the appellant was of such a nature as was likely to drive her to commit suicide or to cause danger to her life, limb or health. Under the circumstances, the conviction of the appellant under Section 498A IPC cannot be regarded as erroneous.

11. Similarly, there is no manner of doubt that the appellant had driven the deceased to commit suicide. It is well to remember that earlier also, the deceased used to narrate the cruelty meted out by the appellant to her parents when she used to visit her parental house on certain occasions, but on persuasion and probably in the interest of three children, she used to return to her matrimonial home. However, the appellant had not given up his suspecting nature. When a boy named Galabhai had passed by the deceased, the appellant had started asking question to the deceased as to why she had a talk with him and then started beating her. The statements of the deceased as recorded by Executive Magistrate Mr.Mackwan and PSI Mr.Padhiyar make pathetic reading. One who beats his wife for the whole night must be attributed the knowledge that beating wife for the whole night would drive her to commit suicide. There is no manner of doubt that the appellant had abetted the commission of suicide by the deceased and, therefore, his conviction under Section 306 IPC is also not liable to be interfered with.

Cogent and convincing reasons have been recorded by the learned Judge of the trial Court who had advantage of observing demeanour of the witnesses for convicting the appellant under Sections 306 and 498A IPC. Those reasons are to be found in paragraphs 7 to 11 of the impugned judgment with which this Court fully concurs. As the learned counsel of the appellant has failed to persuade this Court to take a view different than the one taken by the learned Judge of the trial Court on appreciation of evidence, the appeal, which has no substance, must be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal be disposed of in terms of directions given by the learned Judge in the impugned judgment.

(J.M.PANCHAL, J.)

(H.B.ANTANI, J.)

Rajendra